IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE THIRTY FIRST DAY OF AUGUST
TWO THOUSAND AND SIX

PRESENT
THE HON'BLE SRI JUSTICE T.CH.SURYA RAO
and
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No.6648 of 2004

Between:

Ramachandra Arni.

.....
PETITIONER

AND

1.State of Andhra Pradesh,
rep. by Revenue Divisional Officer,
Hyderabad, and 2 others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO
and
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No.6648 of 2004

ORDER: ***(Per Hon'ble Sri Justice T.Ch.Surya Rao)***

The instant Writ Petition is directed against the judgment, dated 12-02-2004, passed by the learned Special Court under the A.P.Land Grabbing (Prohibition) Act, Hyderabad, in L.G.C.No.34 of 1991. The first respondent herein filed the application in L.G.C.No.34 of 1991 against the writ petitioner and respondents 2 and 3 herein.

The case of the applicant, as can be seen from the concise statement appended to the application, was that the writ petitioner grabbed the land in TS.No.4/1/1/C, part Block D, Ward No.10, in an extent of 800 square meters and constructed a building and a compound wall in the open area and has been enjoying the land since 13 years and that the said land was a Government land, which is very valuable property, and grabbing is an offence as per the provisions of the A.P.Land Grabbing (Prohibition) Act, 1982 (for short 'the Land Grabbing Act').

Inter alia, in the application, the applicant

traced the history of the land. The land in dispute was originally in Shaikpet Village of Golconda Mandal, Hyderabad District. It was formerly a Sarfekhas Village. As per the initial survey of Shaikpet Village done in 1326 Fasli and Sethwar issued in consequence thereto, there were totally 353 survey numbers in the village and out of them Survey No.129 was one, whose extent was Ac.3288.02 guntas, and the same was classified as Government land in Banjara Hills. In 1331 Fasli,

a supplementary Sethwar was issued sub-dividing Sy.No.129 into 10 sub-divisions *viz*., Sy.Nos.129/1 to 129/10. Sy.No.129/1 measuring Ac.3097.39 guntas was classified as Kahncha Tattikhana (Grazing land) while Sy.Nos.129/2 to 129/10 measuring Ac.190.03 guntas was shown as patta land. In 1334 Fasli, a supplementary sethwar was issued whereunder Sy.No.353 was deleted. Again in 1346 Fasli, one more supplementary sethwar was issued whereunder Sy.Nos.129/1 to 129/10 were deleted and 52 new survey numbers were added from 353 to 404. Its

total extent was Ac.3288.02 guntas, which correlates to the area covered by Sy.Nos.129/1 to 129/10. Sy.No.129/1 corresponds to Sy.No.403 measuring Ac.3097.39 guntas. During the Sarfekhas regime, a Revision Survey was taken up, and it was announced in 1352 Fasli, in which Sy.Nos.129/11 to 129/87 were shown as patta land as per the correlation statement. The area covered by Sy.No.403 was thus reduced from Ac.3097.39 guntas to Ac.2967.67 guntas. But, Sy.Nos. 129/19 and 129/85 were not in existence. Thus, it is the case of the applicant that the land in dispute was part of Sy.No.403 and was grabbed by the writ petitioner. It appears an additional concise statement was filed later by the applicant. According to this statement, during 1965, Town Survey of twin cities was taken up. The Survey Officers issued a notification under Section 6(1) of the Andhra Pradesh Survey and Boundaries Act, 1923, inviting the public to attend either in person or through their agent for the purpose of pointing out boundaries and supplying the information. Individual notices under Section

9(2) of the A.P.Survey and Boundaries Act were also issued. During the town survey operations, the Government land in old Sy.Nos.403, 120/19 etc., in Shaikpet Village, Golconda Mandal, was divided into 4 wards and 53 blocks. After the completion of survey, it was notified in the District Gazette, and the survey records prepared, consequently, became final. According to the said town survey records, TS.No.4/1/1/C, part Block D, Ward No.10 of Shaikpet Village in Golconda Mandal was classified as Government land. First respondent/writ petitioner and others grabbed the government land to an extent of 800 square meters and constructed pucca houses thereon.

This was resisted by the first respondent by filing a counter. The case of the respondent was that the land in an extent of Ac.5-32 guntas was part of Sy.No.129/86 of Shaikpet Village, Banjara Hills, Road No.14 and was an evacuee property which vested in the Custodian of evacuee property under notification dated 20-11-1951 and

that property was sold by the Custodian in public auction. One

Sri A.R.Chellani was declared as the purchaser of the said property and sale was confirmed in his favour on 22-06-1961. Sale Certificate dated 20-12-1966 was issued to him.

The said A.R.Chellani executed a registered gift deed dated

26-12-1961 in favour of his three sons *viz*., Srichand, Kanaya, Jaikishan and his daughter-in-law Pushpa Chellani, after converting the land into plots. The first respondent entered into an agreement to purchase plot No.11 of the site plan from Srichand Chellani on 08-11-1963 in an extent of 2023 square yards. Pursuant to the said agreement, he purchased the said property under a registered sale deed dated

06-03-1965. Before the registration of the sale deed, he got it published in Deccan Chronicle on 18-04-1964, and since no objections had been set forth pursuant thereto, he purchased the property by means of a registered sale deed. After having obtained necessary permission from the

Municipal Corporation of Hyderabad, he got a residential house constructed thereon as per the sanctioned plan dated 17-02-1966. Therefore, the first respondent was not a land grabber.

At the time of enquiry, four witnesses were examined on the side of the applicant and Exs.A.1 to A.9 were got marked. Two witnesses were examined on the side of the first respondent and Exs.B.1 to B.15 were got marked. The Commissioner was examined as CW.1 and Exs.C1 and C.2 were marked on the side of the Court.

Appreciating the evidence on record, both oral and documentary, the learned Special Court was of the view that the first respondent was a grabber to an extent of 333 square meters of site only. Having been aggrieved by the said decision, the first respondent has filed the instant Writ Petition.

We have heard Sri M.V.S.Suresh Kumar,

learned Counsel for the writ petitioner and the learned Government Pleader for Assignment representing the State.

After considering the documents available on record and having heard either side, the case appears to be that while it is the contention of the State that the land in dispute, which has been more clearly described in the schedule appended to the application, is part of Sy.No.403; it is the case of the first respondent that it is part of Sy.No.129/86 and was an evacuee property and he purchased the same from the original purchaser, who purchased the property from the Custodian of evacuee property in a public auction. During the course of the evidence, it so transpired that the land in dispute was not a Government land but it was part of the evacuee property, which was sold in public auction.

A Commissioner (CW1) was appointed by the Court so as to survey the land in dispute, and he was examined in this case as CW.1. CW.1, who visited the locality, got it surveyed, prepared a

plan-Ex.C.2 and submitted his report-Ex.C.1, appending therewith Ex.C.2-plan. His evidence coupled with his report-Ex.C.1 and plan-Ex.C.2 shows that the land in dispute falls under old Sy.No.129/86, which was an evacuee property. However, an extent of 333 square meters of land was in excess and falls outside the land covered by Sy.No.129/86. Accepting the said report, the learned Special Court eventually held that the writ petitioner was a grabber to the extent of the piece of land measuring 333 square meters.

As discussed herein above, it was the case of the State that the entire extent of 800 square meters was the Government Land. The writ petitioner claimed that it was a patta land covered by Sy.No.129/86. During the survey conducted by CW.1, he had taken the old plan and since the original tippon containing the measurements was not available, he has taken deduced measurements and prepared a plan and that plan was superimposed on the original plan and the result was that there appears some excess

towards north and east. In that view of the matter, the learned Special Court was of the view that insofar as the disputed land is concerned, a piece admeasuring 333 square meters was falling outside the land covered by Sy.No.129/86.

The learned Counsel appearing for the writ petitioner represents that the survey conducted by CW.1 cannot be accurate and cannot be taken as a gospel truth. It is his further contention that, at any rate, it is not the case of the Government that there has been an encroachment by the writ petitioner on the northern side. Earlier to the appointment of CW.1 as Commissioner by the Court, an Advocate-Commissioner was appointed, who too visited the suit locality and submitted his report. It appears that the Advocate-Commissioner has not completed the survey on account of some constraints stated by him *inter alia* in his report. That report shows that the land in dispute tallies as per original layout-Ex.B.13, got prepared by the vendor of the writ petitioner. As stated herein above, before selling the land to

the writ petitioner, the vendor got the land divided as per the layout prepared by him, after having obtained the necessary permission from the Municipal Corporation of Hyderabad. That layout has been filed in this case as Ex.B.13. The evidence of Advocate-Commissioner clearly shows that the land in dispute tallies as per the plan. Therefore, the finding that the writ petitioner encroached a part of the Government land can safely be ruled out as per the report of the Advocate-Commissioner. One thing is obvious that plot No.11 in the layout is the plot purchased by the writ petitioner and he constructed the house after having obtained necessary permission from the Municipal Corporation and constructed all around a compound wall.

On the northern side of his house, there are other houses which were constructed by purchasing the plots from the original vendor of the writ petitioner, and towards the north of all these plots, is the Government land covered by Sy.No.403.

Even the original plan, taken up by CW.1-the Deputy Commissioner of Survey, also shows that the northern side land is covered by Sy.No.403, which belongs to the State. At that stage, none visualized that it was a case of encroachment in part into the land covered by Sy.No.403. As per the evidence of PW.2-the Mandal Revenue Officer, on the northern side of the house belonging to the writ petitioner, there is a house adjoining the compound wall of the petitioner. There is no inch of land in between that house and the house of the writ petitioner since the northern and southern compound walls are adjacent. Having regard to these state of affairs, it can be said that it was not a case of grabbing of the property of the Government but it was a case of encroachment into a part of the land of the Government either at the time of construction of the house or at the time of laying out the plots. As discussed herein above, since it was not visualized by anybody, the parties have set out their independent cases in their pleadings.

In view of the above circumstances, it is difficult to make out a different version other than the two versions set out already by the parties themselves. The deduced measurements theory of CW.1 have brought the controversy into the fore. Obviously, the lay out prepared by the vendor of the petitioners and sanctioned by the Municipal Corporation is consistent with the original map prepared during the course of survey and settlement operations. During the survey settlement operations it was not a case of encroachment. T.S.No.129/86 was clearly shown as distinct and different from survey No.403. Even as per the evidence of C.W.1 the measurements could not be taken so as to see whether the disputed property falls out of T.S.No.129/86 inasmuch as the entire area was fully covered by the plot. That is the reason why C.W.1 resorted to deduced measurement theory. Obviously, the area could not be surveyed or measured. It is trite that boundaries would prevail over the measurements. The actual extent

covered by T.S.No.129/86 may not be accurate. In that view of the matter, this deduced measurements theory cannot be accurate and prevail over earlier survey where actual measurements have been taken and sketch prepared. Under the above circumstances, there will be a margin of error. It is nobody's case till C.W.1 submitted his report that it was a case of encroachment into a part of land covered by survey No.403. The northern neighbour of the petitioner never complained of any such encroachment by the petitioner. All along, it has been the case of the respondent/State that the land in dispute is covered by survey No.403. Under those circumstances, we are of the considered view that the deduced measurements theory cannot be countenanced and cannot, at this stage, be taken into consideration.

Learned Counsel for the writ petitioner represents that in respect of the plot, which is situated towards the eastern side of the disputed plot, the State filed Land Grabbing Case No.29/96

against the owner of that plot and eventually that case ended in dismissal. Having regard to the said fact, it is obvious from the record that the writ petitioner constructed the house as per the approved plan, which is in accordance with the original lay out, and any encroachment on his part can safely be ruled out. It becomes unrealistic to say that the writ petitioner has encroached upon a part of the land of the State when the northern boundary tenant, who got a house constructed has not encroached any part of the land. It is not the case of the State that the northern boundary tenant of the disputed land is also an encroacher or a grabber of the land.

For the above reasons, it is not reasonable nay unrealistic at this stage to hold with all precision that it was a case of encroachment of the Government land by the writ petitioner in an extent of 333 square meters. On the other hand, in our considered view, we have to accept either the case of the Government or the case of the writ petitioner and there can be no via media. Since

it is obvious and has been considered by PW.2 himself that the disputed land was part of the evacuee property, the finding of the learned Special Court that there has been an encroachment to the extent of 333 square meters of Government site cannot be sustained. The learned Special Court has ignored the fact that either the version of the applicant or the version of the first respondent shall have to be accepted and there can be no other version in the case. As discussed herein above, again that becomes unrealistic having regard to the present state of affairs. For the above reasons, the Writ Petition is to be allowed.

In the result, the Writ petition is allowed. But in the circumstances, there shall be no separate order as to costs.

(T.Ch.Surya Rao, J)

31st August, 2006

(G.Chandraiah, J)

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